



STATE REPRESENTATIVE

JON RICHARDS

WISCONSIN STATE ASSEMBLY

Representative Jon Richards

Assembly Bill 482

Assembly Committee on Health and Health Care Reform

October 14, 2009

Good morning members of the Assembly Health and Health Care Reform Committee and thank you for your attention and interest in finding ways to lower the cost of prescription drugs.

As all of you know, I have listed on a white board in my office my four guiding principles of health care reform: lower costs, improve quality, increase access and promote prevention. Assembly Bill 482 will lower the cost of select prescription drugs by exempting prescription drug sales from Wisconsin's Unfair Sales Act. This law prevents retailers from offering products for sale below wholesale cost. While this is not a silver bullet to solve our health care crisis, it is small step toward advancing all four goals.

Currently, large retailers like Target and Wal-Mart offer an extensive list of generic drugs for \$4.00 for a 30 day supply or \$10 for a 90 day supply. This is a tremendous value, but not all of the pharmaceuticals included in these programs are available to Wisconsin residents due to the Unfair Sales Act.

Will this have a meaningful impact on the lives of our constituents? Imagine being a patient with arthritis and high cholesterol – not an uncommon combination. A patient with these two conditions who is prescribed Naproxen and Lovastatin would have to pay approximately \$9.00 per month per prescription under current law compared to the \$4.00 rate offered under some discount programs. This represents a \$10.00 per month savings, or \$120.00 per year – a significant savings, especially for those getting by on a fixed income or those who do not have prescription drug coverage. Drugs covered under these discount programs include drugs to control diabetes, cholesterol, pain, asthma and high blood pressure, thyroid medications, drugs for mental health problems and even smoking cessation therapies.

This proposal is different from past discussions about repealing the entire Unfair Sales Act, especially as it relates to gasoline sales. This is different because it has profound impact on peoples' well-being. It is one thing to debate a few pennies on a gallon of gas and another thing entirely to discuss ways for people to afford their diabetes or glaucoma medications. This bill's very narrow focus will help those in need.

The vast majority of U.S. citizens have access to these steep discounts including our neighbors in Illinois, Michigan and Iowa. Only the states of California, Hawaii, Montana, Minnesota, Pennsylvania and Tennessee have restrictions on these low cost drug sales. We can't in good conscience continue a policy that denies people access to affordable prescription drugs. With prescription drug and other health care related costs rising faster than the rate of inflation it is imperative that we help our seniors and those on fixed incomes find affordable ways to maintain their health and prevent serious complications that can result from not taking preventative measures.

Thank you for your attention and I am available to answer your questions at this time.

**Testimony by Lynne Dittman, President of the Pharmacy Society of Wisconsin
Before the
State Assembly Committee on Health and Healthcare Reform
Wednesday, October 14, 2009**



*"Leading Our Profession
in a Changing
Health Care Environment"*

Thank you, Chairman Richards and members of the Assembly Committee on Health and Healthcare Reform for this opportunity to testify on Assembly Bill 482 (AB 482). I am Lynne Dittman, President of the Pharmacy Society of Wisconsin (PSW).

The Pharmacy Society of Wisconsin opposes AB 482.

Every month Wisconsin pharmacists dispense over 6 million prescriptions to patients they serve. Everyday, these pharmacists are confronted face to face with the reality that some of our citizens have a difficult time paying for their medications. However, the good news is that the vast majority of Wisconsinites have some form of insurance coverage for their prescription medications and, in most cases, they are only responsible for making a copayment for the medication, not paying for the entire cost. In fact, since the beginning of the Medicare Part D programs three years ago, now over 95% of the prescriptions dispensed in Wisconsin are paid for through some type of insurance or third-party program.

PSW is a membership-based organization, with pharmacist members from all types of pharmacy practice—independent pharmacies, chains, and hospitals. I have personally had experience practicing and managing in both hospitals and community pharmacies. All of my practice experience has been in the Milwaukee/Waukesha area.

From the outset, I would like members of this committee to know that this is not an independent pharmacy versus chain pharmacy issue. The vast majority of pharmacists in this state, whether they are independent owners, chain managers, or administrators in a hospital system, have concerns about this legislation. We are all troubled by the fact that pharmacy is again being singled out when Wisconsin's Unfair Sales Act covers virtually everything legally sold to Wisconsin consumers. The law is in place to keep predatory pricing practices from developing. As you know, predatory pricing is when a business purposefully sells a product below cost in an effort to grab market share and drive out competition. The idea of a short term consumer gain, in exchange for a long term stable business environment, has been something that Wisconsin policy makers have wisely turned down when it has been proposed in the past.

Furthermore, prescription medications are not a commodity and they should not be treated as such. Prescription medications are health care products that are heavily regulated by both state and federal agencies. They are uniquely prescribed and dispensed for individuals. The fact that prescription drugs are not available to consumers other than through licensed health care providers is testament to their unique role in health care...certainly more than a commodity that could be bought here or there.

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Pharmacists strive to hold down costs and deliver a valuable service for all patients. But I want to emphasize that the price of a medication is only one consideration that pharmacists use to hold down costs.

Pharmacists are the health care providers with the expertise in pharmacology and we regularly work with our patients and their physicians to suggest other therapies that can have the same results but at a lower price.

Let me provide one example: A patient presents a prescription at the pharmacy for Avapro (irbesartan), a medication used to treat high blood pressure. There are advantages to using this medication over other medications but it is an expensive medication relative to some other high blood pressure medications. If a patient does not have insurance, and even in some cases when they do, pharmacists will assess a patient's ability to routinely pay for this medication: after all, the medication is used to treat high blood pressure, not cure it, so they will be taking it until something better comes along. If a patient has concern about the price of Avapro and would prefer to begin treatment with something less expensive, a pharmacist might call the physician and recommend a different high blood pressure medication, often one that is generically available, such as enalapril. Although doses vary by patients, and therefore so do the relative costs, the change in therapy in this example would result in the dispensing of a medication that costs about \$100 less each month for a patient paying out of pocket for the medication, and likely \$20-30 less in monthly co-payment for a patient with insurance.

We encourage all patients to work with their pharmacists and discuss the medications they are taking. PSW strongly discourages consumers from shopping around in order to receive a particular medication solely based on price. Buying a medication at one pharmacy and buying another medication from a pharmacy across town or over the internet leads to a patient splitting up their prescription drug record—creating the possibility for drug interactions and other health care complications; patients should receive all their medications from one pharmacy.

Wisconsin pharmacy providers strive to perform a consultation for every prescription they dispense; this has been a practice standard in Wisconsin for over twenty years. Patient consultations have been documented to save cost to patients but more importantly, consultations improve the health care of the patient by improving their understanding of the medications they are taking. Prior to dispensing a prescription drug and as part of the consultation process, Wisconsin pharmacists review all the medications previously dispensed for that patient. During this review the pharmacist may notice duplications of therapy or find contraindications in medications that could have serious implications for the patient. An incomplete prescription drug record impedes the pharmacist's ability to fully consult the patient on their medication therapies.

Current law simply says that a pharmacy cannot sell below their invoice cost for a particular drug. If a pharmacy pays \$25 for a drug, you would expect it would need to set the sales price to allow for their costs to be recovered, at a minimum. That is how business works. And, ultimately a profit must be made in order to stay in business. However, there are some businesses that could use the changes proposed by this bill to sell below their cost for a period of time, at the expense of other pharmacies in the area.

Not only is this bad for the stability of the pharmacy business environment, by their nature loss leaders encourage consumers to shop around and, in this case, fractionate their treatment amongst multiple pharmacy providers.

A community pharmacy, whether it be an independent or a chain, is in business primarily to dispense prescription medications. These businesses provide a safe and usually convenient method for consumers to receive needed medications. Yes, some pharmacies also sell other items, but their primary business is the dispensing of medications; take the pharmacy professional out of the business and you have another Ben Franklin and how many of those stores do you see anymore? That's what this bill would cause to occur. We believe there would be fewer pharmacies, not more Ben Franklins.

Recently, the Pharmacy Society of Wisconsin conducted a survey about the cost of prescription drugs and options that pharmacy providers offer to patients that do not have any prescription drug coverage. I would like to reveal some of that information here:

- ✓ 61% of the Wisconsin pharmacies surveyed offer special discounts to seniors and other groups of patients. Others offered every day competitive pricing.
- ✓ 100% of the Wisconsin pharmacy survey respondents accept the State of Wisconsin sponsored Badger RX Gold card, a discount program that was advocated by the Coalition of Wisconsin Aging Groups and others.
- ✓ 74% of the pharmacies also accept other discount cards such as the card sanctioned by the Wisconsin Counties Association.
- ✓ 100% of the surveyed pharmacies offer to review patient's medication histories and make recommendations to provide less expensive therapies.
- ✓ Finally, nearly every pharmacy in Wisconsin participates in the Medicaid, BadgerCare and SeniorCare prescription drug programs (although some pharmacies may be changing that status due to recent Medicaid funding and payment policy changes).

To conclude, I know members of this committee have been briefed on Wisconsin's Unfair Sales Act. There are provisions of Wisconsin's Unfair Sales Act which regulate the price of a variety of consumer goods sold in this state. Most of the Act's provisions reference pricing of retail gas, cigarettes, beer and liquor. For the most part, the Act sets the minimum price for these items at a percentage above the invoice cost. (This is commonly referred to as the "Minimum Mark-up Law".) Prescription drug prices fall under a different section of the Act titled Illegality of Loss Leaders. This section requires that a product's price (in this case prescription drugs) cannot be set below the retailer's invoice price. Although prescription drugs are not specifically cited in the statutes, they are believed to be covered as any other product sold at a retail level in the state.

We believe it is vitally important to Wisconsin's consumers and the health care system infrastructure that prescription medications be dispensed and sold in a professional manner. Selling below cost, for any business, would only be temporary and likely supported through higher prices associated with the sale of other products. In either case, consumers would be hurt and Wisconsin's professional pharmacy practices, in place to serve the citizens of the state, would be jeopardized.

Thank you again for this opportunity; I respectfully request that members of the Assembly Health and Healthcare Reform Committee reject AB 482 which selectively exempts prescription drugs from Wisconsin's Unfair Sales Act.

I will now be glad to answer any questions committee members may have.



Coalition of Wisconsin Aging Groups
Advocacy ■ Membership ■ Elder Law

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Testimony Before the Assembly
Committee on Health and Healthcare Reform
October 14, 2009

*Securing the present
and protecting
the future.*

On behalf of the Coalition of Wisconsin Aging Groups, I urge you to vote in favor of AB 482. Since the Medicare Part D Rx Drug program was initiated drug prices have gone up around 8% a year, and a recent Kaiser Family Foundation report indicates that Part D premiums may go up 10% or more in 2010. AB 482 is something positive that we can do here in Wisconsin to actually lower drug prices.

Since older persons take more Rx medications they stand to benefit the most. Here's how: several retailers, including Walmart and Target, offer about 350 generic drugs for \$4.00 a month or 3 months for \$10.00. Unfortunately, due to Wisconsin's minimum mark up law, approximately one-third of these drugs cannot be sold for \$4.00 but, generally, cost \$9.00. Walmart estimates that Wisconsin consumers would save over \$25 million a year if Rx drugs were exempt from the mark up law. I believe that this amount would double if you included all the additional retailers with \$4.00 generic programs. Incidentally, repeal of the law on Rx drugs also would save money for Wisconsin's Medicaid, Badger Care and Senior Care programs, and for private insurance companies.

Wisconsin is one of a few states to have such a law and, originally, it was meant to protect small retail stores from larger competitors who could afford to artificially lower prices to drive their smaller competitors out of business. I do not believe that passage of the bill will be the "final straw" for small businesses, and forcing lower income older persons to pay higher prices for Rx drugs is not the way to protect small businesses.

In addition to CWAG, the bill is supported by the Wisconsin Alliance of Retired Americans, Wisconsin Retired Educators Association, Wisconsin Association of Nutrition Directors, Fox Valley Area Labor Council Retirees Club, the Milwaukee County Commission on Aging, the Wisconsin Counties Association, and others.

**Testimony of Lisa B. Nelson
Walmart Wisconsin, Senior Manager - Public Affairs and Government Relations
Assembly Health and Health Care Reform Committee
AB 482, Relating to the Minimum Mark-up Sale of Prescription Drugs
October 14, 2009**

Good Afternoon Chairman Richards and fellow Committee Members. My name is Lisa B. Nelson, and I am the Senior Manager – Public Affairs and Government Relations for Walmart Wisconsin. I am here today to testify in support of AB 482, legislation authored by Chairman Richards that relates to the minimum mark-up sale of prescription drugs. This legislation is identical to Representative Wasserman's legislation from last session AB 713, which passed out of the Assembly Health Care Committee, then chaired by Representative Vukmir, by a wide 11-2 bipartisan vote.

Walmart Wisconsin is proud to work with Chairman Richards, and other members of this committee, along with the Coalition of Wisconsin Aging Groups (CWAG), the Wisconsin Counties Association, retirees from several labor unions and an array of editorial pages across the state in support of this important legislation, which will reduce prescription drug costs for hardworking families across Wisconsin during these difficult economic times.

Since 2006, Walmart stores across America have offered their customers more than 300 generic prescription drugs for a reduced price of \$4.00 a month. This pricing has saved Wisconsin residents nearly \$30 million in the three plus years that this program has been in effect. However, as a result of Wisconsin's Minimum Mark-up law, not all of the generic prescription drugs that Wal-Mart offers are available at the \$4.00 a month price. Some drugs in Wisconsin, unfortunately, must be sold for \$9.00 a month due the state's outdated and costly minimum mark-up law. If enacted, AB 482 could save the thousands of Wisconsin residents who already take advantage of Walmart's \$4.00 a month program millions of dollars that would stay in their pocket or be used for something else.

As we all know, families across Wisconsin are facing difficult economic times due to the slowdown in our nation's economy. Unfortunately, due to slowdown of the economy many Wisconsin families have been impacted by job loss, which means that they are struggling to find access to affordable, quality health care. That is why it is imperative that we, as the private sector and you as public policymakers, do everything possible to reduce the health care costs of Wisconsin's residents.

In closing, AB 482 is one of those rare pieces of legislation that actually costs the state nothing but could save Wisconsin residents million in lower prescription drug costs. I encourage you to pass this legislation and am happy to answer any of your questions.

Thank you.